IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 87 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASIKLAL B BHATT

Versus

LAXMIPRASAD B BHATT

Appearance:

MR GIRISH D BHATT for Petitioner No. 1

MR KV SHELAT for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 29/10/2002

ORAL JUDGEMENT

1. This appeal is directed against the judgement and order dated 07-01-1982 passed by the learned Civil Judge (S.D.), Surendranagar in Civil Misc. Application No.68 of 1979 whereby the learned Judge granted the said application filed by the respondent for obtaining probate

of the Will of deceased - Rukhmaniben. The appellant who was the Caveator has filed this appeal challenging the said order.

2. The facts leading to this appeal between the parties are as follows.

2.1. Rukhmaniben was aged about 87 at the time of her death on 04.07.1978. Out of her three sons, at the time of her death, two sons Laxmishankar and Rasiklal were alive. Rasiklal was living at Bombay at the relevant time and Laxmishankar was living in Ahmedabad. About 3-4 years before her death, Rukhmaniben had come from Bombay to Ahmedabad to live with Laxmishankar. According to Laxmishankar, she made a Will on 15.03.1977. In the Will, there was mention of a house property at Surendranagar which was given to Laxmishankar. Nothing was given to Rasiklal. Laxmishankar made an application for probate on 06.11.1979. Rasiklal entered caveat on 21.07.1980 and filed an application opposing the prayer for probate.

3. Since the application was contested, the learned Judge recorded the evidence led by the parties. Laxmishankar examined himself at Exh.27. He also examined two other witnesses. Shri Amrutlal Manishankar Dave, Exh.44, was an attesting witness and Dr.Dineshchandra Narandasji, Exh.43, who had examined Rukhmaniben on the date on which she made the Will. He said that the mental condition of Rukhmaniben was good and she was conscious about time, place, etc. He had issued certificate Exh.32.

4. Rasiklal, who was the caveator, was the only witness examined on his side.

5. The learned trial Judge referred to the decisions of the Supreme Court in the case of H.Venkatachala Iyengar Vs. B.N.Thimmaiamma (A.I.R. 1959 SC 443) and Rani Purnima Devi Vs. Jhagendra Narayan Dev (AIR 1962 SC 567) dealing with the mode of proving a Will and the learned Judge discussed the evidence in detail in the light of the said principles and came to the conclusion that the deceased was in a sound and disposing state of mind when she made the Will and that one suspicious circumstance, namely, that she had bequeathed the property to only one son had been explained. He also found that the Will had been attested and that it was a genuine Will. He negatived the contention on behalf of the Rasiklal that the Will was bogus and was not voluntarily made. He, therefore, granted the probate as

prayed for.

6. The learned counsel for the appellant submitted that the Will was bogus and that Rukhmaniben who was aged about 87 was not physically and mentally fit to make a Will. He submitted that there were several suspicious circumstances surrounding the execution of the Will. He pointed out that the elder son had been cut off without any reason. He referred to the fact that the body of the Will refers to the thumb mark of the testator but, in fact, the Will is said to have been signed by the testator, which creates doubt.

7. The learned Judge has discussed the evidence of Dr.Dineshchandra in para 11 of his judgement. The said doctor was called to the residence of the testator on 15.03.1977, the date on which the Will was made, and his evidence shows that the testator was mentally fit, though physically weak. He also said that she was conscious about time, place, etc. He had also issued certificate, Exh.32 in this regard. The learned judge believed the evidence of the doctor and nothing is pointed out which will shake his creditability. The learned Judge was, therefore, justified in coming to the conclusion that the testator was in a sound and disposing state of mind. As for the contention that the testator is said to have put her signature on the Will, though in the draft of the Will which had been prepared she was supposed to put a thumb mark, the learned Judge believed the explanation given by the attesting witness Amrutlal that when the draft of this Will was typed, the typist thought that Rukhmaniben who was making the Will was old and he presumed her to be illiterate and in a routine way typed these words. As far as the circumstance that Rasiklal who was the elder son was given nothing under the Will is concerned, the evidence discloses that previously Rukhmaniben was staying with Rasiklal at Bombay but Rasiklal did not look after her properly and she came to Ahmedabad to live with Laxmishankar about 3-4 years before her death. Hence, there is nothing unnatural, if she excluded Rasiklal from her Will.

8. In the circumstances, there is no warrant for interfering with the finding that the Will was a genuine Will. The learned Judge was, therefore, justified in granting probate of the same.

9. There is no substance in the appeal and the same is dismissed. No order as to costs.

[M.C.PATEL,J]

'Bhavesh'